

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

ROY D. HEATH

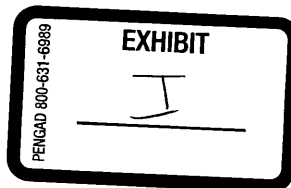
PETITIONER,

VS.

STATE OF ALABAMA

RESPONDENT.

CASE NO. CC 01-30.62



FILED IN OFFICE
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CIRCUIT/DIST. COURT
RUSSELL CO., AL.

ORDER

The Petitioner, Roy D. Heath, has filed a petition pursuant to Rule 32 of the Alabama Rules of Criminal Procedure seeking relief from conviction and sentence. Petitioner cites as grounds for relief:

1. Violation of United States Constitution.
2. Lack of jurisdiction.
3. Sentence exceeds maximum authorized by law.

Upon consideration of this Court's records and of the transcript submitted on appeal of this case to the Alabama Court of Criminal Appeals, this Court finds that the Petition for relief should be dismissed.

Petitioner, Roy D. Heath voluntarily and knowingly entered a plea of guilty in cases CC-01-30 and CC-01-36. He signed a copy of the plea bargain agreement in which he waived additional proof of his past convictions at sentencing and in that same plea bargain agreement he stipulated that his sale of a controlled substance occurred within 3 miles of both a school and a public housing project. Petitioner waived further proof of this fact at sentencing.

Petitioner, Roy D. Heath, filed an appeal of his conviction at

sentencing. At the trial court defendant was represented by the Hon. John Britton. On appeal before the Alabama Criminal Court of Appeals defendant was represented by Hon. Charles Floyd, III. The issue of ineffective assistance of counsel should have been raised in a motion for new trial or on appeal. A subsequent raising of this issue is barred.

It is therefore ORDERED, ADJUDGED AND DECREED that the Petition for relief is hereby dismissed.

DONE this the 12th day of June 2003.


JUDGE, CIRCUIT COURT

PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

(Pursuant to Rule 32,
Alabama Rules of Criminal Procedure)

Case Number

CC 01 030,036
ID YR NUMBER

IN THE CIRCUIT COURT OF RUSSELL ALABAMA

ROY DAVID HEATH

Petitioner (Full Name)

vs.

STATE OF ALABAMA

Respondent

[Indicate either the "State" or,
if filed in municipal court, the
name of the "Municipality"]

Prison Number #217344 Place of Confinement FOUNTAIN 3800

County of conviction RUSSELL COUNTY, ALABAMA

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY
THE ACCOMPANYING INSTRUCTIONS.

1. Name and location (city and county) of court which entered the judgment of conviction
or sentence under attack RUSSELL COUNTY CIRCUIT COURT

PHENIX CITY, ALABAMA

2. Date of judgment of conviction MAY 31st, 2001

3. Length of sentence THIRTY YEARS, "EACH COUNT"

4. Nature of offense involved (all counts) DISTRIBUTION OF MARIJUNANA,

DISTRIBUTION OF A CONTROLLED SUBSTANCE "CC-01-36, ct.#1"

POSSESSION OF MARIJUANA, CC-01-36, Ct. #2

5. What was your plea? (Check one)

(a) Guilty x

6. Kind of trial: (Check one)

(a) Jury _____

(b) Judge only X

7. Did you testify at the trial?

Yes _____

No X

8. Did you appeal from the judgment of conviction?

Yes X

No _____

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court Circuit Court of Russell County, Alabama

(2) Result Appeal not Perfected

(3) Date of result N/A

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court N/A

N/A

(2) Result N/A

N/A

(3) Date of result N/A

N/A

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court N/A

N/A

(2) Result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes _____ No X

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(attach additional sheets if necessary) _____

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No X

(5) Result N/A

(6) Date of result N/A

- (b) As to any second petition, application, or motion, give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(attach additional sheets if necessary) _____

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No X

(5) Result N/A

(6) Date of result N/A

- (c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(2) Nature of proceeding N/A(3) Grounds raised N/A

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes No X(5) Result N/A(6) Date of result N/A

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes No X(2) Second petition, etc. Yes No X(2) Third petition, etc. Yes No XATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

N/A

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

GROUND OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

X

A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief. **SEE ATTACHMENT**

- (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

 X B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

SEE ATTACHMENT

 X C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law. **SEE ATTACHMENT**

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceedings, and could not have been discovered by any of those times through the exercise of reasonable diligence and

The facts do not merely amount to impeachment evidence; and

the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes _____

No X

B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court _____ N/A

(b) Result _____ N/A

(c) Date of result _____ N/A
(attach additional sheets if necessary)

C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

15. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

(a) At preliminary hearing JOHN BRITTON

DECEASED

(b) At arraignment and plea " "

(c) At trial " "

(d) At sentencing " "

(e) On appeal CHARLES E. FLOYD III

1000 14th Street, P.O. Box 759 Phenix City, Alabama 3686-

0759

(f) In any post-conviction proceeding N/A

(g) On appeal from adverse ruling in a post-conviction proceeding

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes X

No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes

No X

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

(b) And give date and length of sentence to be served in the future:

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes

No X

18. What date is this petition being mailed?

AS SOON AS POSSIBLE

PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on 1/16/03
(Date)

Ray D. Hault
Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the 16th day of January, 2003

Debra S. Presler
Notary Public
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov 14, 2006
BONDED THRU NOTARY PUBLIC UNDERWRITERS

OR

ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I Swear (or affirm) under penalty of perjury that upon information and belief, the foregoing is true
and correct. Executed on 1/16/03
(Date)

Ray D. Hault
Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the 16th day of January, 2003

Debra S. Presler
Notary Public
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov 14, 2006
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Name and address of attorney representing petitioner
in this proceeding (if any)

